

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DUTCH JACKSON IATG, LLC)
AND)
MICHAEL “DUTCH” JACKSON)
Plaintiffs,) Cause No.: 4:11-CV-00227-CEJ
vs.)
THE BASKETBALL MARKETING)
COMPANY, et al.)
Defendants.)

AMAZON.COM'S ANSWER WITH AFFIRMATIVE DEFENSES

Defendant Amazon.com (“Amazon”), for its Answer to Plaintiffs Dutch Jackson IATG, LLC and Michael “Dutch” Jackson’s (collectively “Jackson”) Complaint, states as follows:

“Summary of Action”

1. Answering Paragraph 1, Jackson’s allegations are nothing more than attorney argument that do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

2. Amazon denies the allegations of Paragraph 2.

3. Answering Paragraph 3, Amazon denies that it has violated federal copyright law, the Lanham Act or “several state laws.” Amazon also denies that Jackson is entitled to damages, including statutory damages. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 and therefore denies them.

“Parties, Jurisdiction, and Venue”

4. Answering Paragraph 4, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and therefore denies them.

5. Answering Paragraph 5, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and therefore denies them.

6. Answering Paragraph 6, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and therefore denies them.

7. Answering Paragraph 7, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore denies them.

8. Answering Paragraph 8, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

9. Answering Paragraph 9, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

10. Answering Paragraph 10, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

11. Answering Paragraph 11, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

12. Answering Paragraph 12, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

13. Answering Paragraph 13, Paragraph 13 is merely a recitation of defendants that are to be collectively referred to as “ESPN Defendants,” which alleges no fact and requires no response from Amazon.

14. Answering Paragraph 14, Amazon admits that it is located in Seattle, Washington, and admits that it offers items for sale via the website www.amazon.com to customers located throughout the world, including customers located within the state of Missouri and the Eastern District of Missouri. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 and therefore denies them.

15. Answering Paragraph 15, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

16. Answering Paragraph 16, Amazon denies the allegations contained therein.

17. Paragraph 17 is merely a recitation of defendants that are to be collectively referred to as "Defendants," which alleges no fact and requires no response from Amazon.¹

18. Answering Paragraph 18, Amazon admits that Jackson purports to allege causes of action under the Copyright Act and Lanham Act, but Amazon denies that this Court has jurisdiction based on these allegations. Amazon denies the remaining allegations of Paragraph 18 not specifically admitted.

19. Answering Paragraph 19, Amazon admits that Jackson purports to allege state law causes of action, but Amazon denies that this Court has jurisdiction based on these allegations. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 19 and therefore denies them.

20. Answering Paragraph 20, Amazon admits that this Court has personal jurisdiction over Amazon. Amazon denies the remaining allegations of Paragraph 20 not specifically admitted.

21. Answering Paragraph 21, Amazon admits that it has made sales in the State of Missouri and this District. Amazon denies the remaining allegations of Paragraph 21 not specifically admitted.

22. Answering Paragraph 22, Amazon admits that venue is proper in this district.

¹. Paragraph 17 states that "from time to time" Amazon will be referred to collectively as one of the "Defendants." Amazon makes a running objection to Jackson's vague allegations that do not distinguish the actions of Amazon from the remaining defendants in suit.

"The And1 Marketing Plan"

23. Answering Paragraph 23, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

24. Answering Paragraph 24, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

25. Answering Paragraph 25, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

26. Answering Paragraph 26, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

27. Answering Paragraph 27, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

28. Answering Paragraph 28, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

29. Answering Paragraph 29, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

30. Answering Paragraph 30, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

31. Answering Paragraph 31, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

32. Answering Paragraph 32, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

33. Answering Paragraph 33, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

34. Answering Paragraph 34, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

"Mixtape X"

35. Answering Paragraph 35, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

36. Answering Paragraph 36, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

37. Answering Paragraph 37, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is

without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

38. Answering Paragraph 38, Jackson's allegations do not specifically relate to Amazon; therefore no response is necessary. To the extent a response is necessary, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

39. Answering Paragraph 39, Amazon is without information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

40. Answering Paragraph 40, Amazon denies the allegations contained therein.

41. Answering Paragraph 41, Amazon did not "assemble the necessary basketball highlights, products and trade names" to insert into "Mixtape X." Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 41 and therefore denies them.

**"The Unauthorized Use of 'I am the Greatest'
Without Plaintiff's Knowledge or Consent"**

42. Answering Paragraph 42, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

43. Answering Paragraph 43, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

44. Answering Paragraph 44, Amazon denies the allegations contained therein.

45. Answering Paragraph 45, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

46. Answering Paragraph 46, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

47. Answering Paragraph 47, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

48. Answering Paragraph 48, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

49. Answering Paragraph 49, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

50. Answering Paragraph 50, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

51. Answering Paragraph 51, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

52. Answering Paragraph 52, Amazon denies that Jackson timely "demanded" that Amazon cease use of his alleged copyrighted materials. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 52 and therefore denies them.

53. Answering Paragraph 53, Amazon denies that Jackson timely "demanded" that Amazon cease use of his alleged copyrighted materials. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 52 and therefore denies them.

54. Answering Paragraph 54, Amazon states that the Copyright Certificate of Registration speaks for itself. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 54 and therefore denies them.

55. Answering Paragraph 55, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies them.

56. Answering Paragraph 56, Amazon denies that it infringed Jackson's alleged copyrighted materials. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 56 and therefore denies them.

57. Answering Paragraph 57, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

58. Answering Paragraph 58, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

59. Answering Paragraph 58, Amazon denies the allegations contained therein.

60. Answering Paragraph 60, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

"Count I--Copyright Infringement Under 17 U.S.C. § 106 et seq.--Direct Infringement"

61. Amazon incorporates herein its answers to Paragraphs 1 through 60 as if fully set forth herein.

62. Answering Paragraph 62, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations therein and therefore denies them.

63. Answering Paragraph 63, Amazon states that the Copyright Certificate of Registration speaks for itself. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 63 and therefore denies them.

64. Answering Paragraph 64, Amazon states that the Copyright Certificate of Registration speaks for itself. Amazon is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 64 and therefore denies them.

65. Answering Paragraph 65, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

66. Answering Paragraph 66, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

67. Answering Paragraph 67, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

68. Answering Paragraph 68, Amazon is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

69. Answering Paragraph 69, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

70. Answering Paragraph 70, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

71. Answering Paragraph 71, Amazon denies the allegations contained therein.

72. Answering Paragraph 72, Amazon denies the allegations contained therein.

73. Answering Paragraph 73, Amazon denies the allegations contained therein.

74. Answering Paragraph 74, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count I, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count II--Contributory Infringement"

75. Amazon incorporates herein its answers to Paragraphs 1 through 74 as if fully set forth herein.

76. Answering Paragraph 76, Amazon specifically denies that it "encouraged and assisted in the infringement" of the alleged copyright materials. Amazon denies the remaining allegations contained in Paragraph 76.

77. Answering Paragraph 77, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

78. Answering Paragraph 78, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

79. Answering Paragraph 79, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

80. Answering Paragraph 80, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

81. Answering Paragraph 81, Amazon denies the allegations contained therein.

82. Answering Paragraph 82, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count II, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count III--Vicarious Infringement"

83. Amazon incorporates herein its answers to Paragraphs 1 through 82 as if fully set forth herein.

84. Answering Paragraph 84, Amazon denies the allegations contained therein.

85. Answering Paragraph 85, Amazon denies the allegations contained therein.

86. Answering Paragraph 86, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

87. Answering Paragraph 87, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

88. Answering Paragraph 88, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

89. Answering Paragraph 89, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

90. Answering Paragraph 90, Amazon denies the allegations contained therein.

91. Answering Paragraph 91, Amazon denies the allegations contained therein.

92. Answering Paragraph 92, Amazon denies the allegations contained therein.

93. Answering Paragraph 93, Amazon denies the allegations contained therein.

94. Answering Paragraph 94, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count III, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count IV--Violations of the Lanham Act, 15 U.S.C. § 1125 et seq., for false advertising, false endorsement, and/or unfair competition"

95. Amazon incorporates herein its answers to Paragraphs 1 through 94 as if fully set forth herein.

96. Answering Paragraph 96, Amazon states that the statute speaks for itself.

97. Answering Paragraph 97, Amazon denies the allegations contained therein.

98. Answering Paragraph 98, Amazon denies the allegations contained therein.

99. Answering Paragraph 99, Amazon denies the allegations contained therein.

100. Answering Paragraph 100, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein.

101. Answering Paragraph 101, Amazon denies the allegations contained therein.

102. Answering Paragraph 102, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count IV, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count V--Waste (Defendants)"

103. Amazon incorporates herein its answers to Paragraphs 1 through 102 as if fully set forth herein.

104. Answering Paragraph 104, Amazon denies the allegations contained therein.

105. Answering Paragraph 105, Amazon denies the allegations contained therein.

106. Answering Paragraph 106, Amazon denies the allegations contained therein.

107. Answering Paragraph 107, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count V, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count VI--Tortious Interference with Prospective Business Expectancy (Defendants)"

108. Amazon incorporates herein its answers to Paragraphs 1 through 107 as if fully set forth herein.

109. Answering Paragraph 109, Amazon is without knowledge sufficient to form a belief as to the truth of the allegations contained therein and therefore denies them.

110. Answering Paragraph 110, Amazon denies the allegations contained therein.

111. Answering Paragraph 111, Amazon denies the allegations contained therein.

112. Answering Paragraph 112, Amazon denies the allegations contained therein.

113. Answering Paragraph 113, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count VI, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count VII--Violations of the Missouri Merchandising [sic] Practices Act"

114. Amazon incorporates herein its answers to Paragraphs 1 through 113 as if fully set forth herein.

115. Answering Paragraph 115, Amazon denies the allegations contained therein.

116. Answering Paragraph 116, Amazon denies the allegations contained therein.

117. Answering Paragraph 117, Amazon denies the allegations contained therein.

118. Answering Paragraph 118, Amazon denies the allegations contained therein.

119. Answering Paragraph 119, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count VII, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count VIII--Civil Conspiracy"

120. Amazon incorporates herein its answers to Paragraphs 1 through 119 as if fully set forth herein.

121. Answering Paragraph 121, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein. Amazon specifically denies participating in a "common scheme to use the Plaintiff's [sic] song."

122. Answering Paragraph 122, as Amazon understands the allegations that pertain to it, Amazon denies the allegations contained therein. Amazon specifically denies performing an "overt act in furtherance of said agreement to illegally utilize, sell, and unlawfully distribute and

transfer various products and merchandise" that contained elements of Jackson's alleged copyrighted materials.

123. Answering Paragraph 123, Amazon denies the allegations contained therein.

124. Answering Paragraph 124, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count VIII, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

"Count IX--Tortious Interference with Right of Publicity"

125. Amazon incorporates herein its answers to Paragraphs 1 through 124 as if fully set forth herein.

126. Answering Paragraph 126, Amazon denies the allegations contained therein.

127. Answering Paragraph 127, Amazon denies the allegations contained therein.

128. Answering Paragraph 128, Amazon denies the allegations contained therein.

129. Answering Paragraph 129, Amazon denies the allegations contained therein.

130. Answering Paragraph 130, Amazon denies the allegations contained therein.

131. Answering Paragraph 131, Amazon denies the allegations contained therein.

WHEREFORE, Defendant Amazon.com prays that judgment be entered in its favor and against Plaintiffs on Count IX, plus costs of suit incurred herein, and for any other and further relief this Court deems just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiffs' Complaint, and each and every cause of action, fails to state facts sufficient to state a cause of action against Amazon upon which relief may be granted.

2. Amazon has no knowledge of any alleged impropriety involving the products set forth in Plaintiffs' Complaint. If Amazon unknowingly infringed any of Plaintiffs' alleged rights, Amazon is an innocent infringer.

3. Plaintiffs' claims are barred by waiver, estoppel, laches, and/or acquiescence.

4. Plaintiffs' claims are barred by the applicable statutes of limitation.

5. Amazon's sales of the accused products, if any, are *de minimis*, and do not justify legal action.

6. Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their damages.

7. Plaintiffs' asserted copyright material is not copyrightable subject matter.

8. Plaintiffs' alleged damages, if any, were caused not by any of Amazon's acts or omissions, but by the acts or omissions of others, including Plaintiffs themselves, for which Amazon is not responsible. As a result, Plaintiffs are not entitled to recover from Amazon for any cause of action stated in the Complaint.

9. Plaintiffs' claims regarding the sale of allegedly unauthorized goods are barred by the First Sale Doctrine.

10. Amazon's alleged use of Plaintiffs' copyrighted material is protected under the Fair Use Doctrine.

11. Amazon is protected from liability pursuant to the terms of the Digital Millennium Copyright Act, as reflected in 17 U.S.C. § 512.

WHEREFORE, having fully answered, Defendant Amazon.com respectfully requests that this Court: (1) deny all relief requested by Plaintiffs; (2) enter judgment dismissing Plaintiffs' claims against Amazon.com with prejudice; and (3) award Amazon.com its attorneys' fees, costs, and such other and further relief that this Court deems just and proper.

Dated: April 5, 2011

Respectfully submitted,

SENNIGER POWERS LLP

By: /s/ Jennifer E. Hoekel

Jennifer E. Hoekel, #74338
B. Scott Eidson, #517872
100 N. Broadway, 17th Floor
St. Louis, Missouri 63102
(314) 345-7000 (Telephone)
(314) 231-4342 (Facsimile)
jhoekel@senniger.com
seidson@senniger.com

Attorneys for Defendant Amazon.com

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2011, a copy the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Charles S. Kramer
RIEZMAN BERGER, P.C.
7700 Bonhomme Avenue
Seventh Floor, Bonhomme Place
Clayton, MO 63105
(314) 727-0101
(314) 727-6458 facsimile
ckramer@riezmanberger.com

Attorney for Plaintiffs

/s/ Jennifer E. Hoekel